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Appeal, Third District, California (161 Pac., 132), it was held that where the owner of a theatre containing a possible means of exit which might or might not become a dangerous nuisance according to the manner in which the premises were used, he was not responsible for injury sustained by a patron, although the lessee was undoubtedly liable. In the principal case it seems clear that the owner ought not to be held liable because he had leased a lake in its natural state and the lessee had been negligent in its use or management. As the court remarks, "The owners are not to be regarded as the creators of the situation or authors of the wrong that resulted."

Corporations—Dividends—Power of Stockholders to Declare and Rights Therein.—In *Thiry v. Banner Window Glass Co.*, in the Supreme Court of Appeals of West Virginia (October, 1917, 93 S. E. 958), the following is from the syllabus by the court:

"While by § 39, chapter 53, of the Code (W. Va.) of 1913 (§ 2872) the board of directors of a corporation is the only governing authority authorized to declare dividends, nevertheless, where stockholders and directors by common consent concur in the management and control of the corporation, such action of the stockholders in declaring dividends, the rights of creditors being in no way involved, is not an invalid corporate act, and the corporation is bound thereby.

"Though a dividend so declared be at the time in excess of the actual net profits earned, the rights of no creditor being involved, and the corporation being solvent, a stockholder cannot be denied his pro rata share of such dividend, and in a action by him against the corporation therefor the supposed illegality of such corporate action is no defense, nor is such stockholder estopped in such action by the fact that he has been paid and accepted sums in the aggregate less than his pro rata share.

"Where a stockholder has subscribed and paid for stock in a corporation he cannot thereafter be deprived of his legal right to participate pro rata in any dividend declared by the subsequent arbitrary action of directors or stockholders attempting to classify stockholders not provided for in his contract."

Criminal Law—Liability of Party Incited by Official to Commit Crime.—Where officers of the law incite one to commit a crime and lure him on to its consummation, the law will not authorize a verdict of guilty against him, according to the holding in *Sam Yick v. United States*—United States Circuit Court of Appeals, Ninth Circuit, March 19, 1917—240 Fed. 60. The defendants were convicted under an indictment charging them with unlawfully conspiring to

bring certain Chinamen into the United States from the Republic of Mexico. The indictment set out certain alleged overt acts of one of the alleged conspirators, consisting of the purchase of a railway ticket by him in pursuance of the conspiracy for his transportation from Bakersfield to the City of San Diego, and in further pursuance of the alleged conspiracy his leaving that city for the town of Tia Juana, Mexico, for the purpose of arranging to bring three Chinamen across the international boundary.

It appeared from the evidence introduced on the trial by the government that one Morse was its local inspector of immigration at Bakersfield during the times in question, having gone there in that capacity about the first of January, 1911, and that in the performance of his duties he had frequent occasion to see the defendant Sam Yick (whom he spoke of in his testimony as the principal Chinaman in that vicinity) in regard to Chinamen in and around Bakersfield; that on the 8th day of May, 1911, he had a talk with Sam Yick in reference to smuggling Chinese into this county, having gone to Yick's store to inquire about a Chinaman named Woo Jung Sing; that Yick told him he knew the Chinaman, and that he was on a ranch about five miles out of Bakersfield, and that he would take the inspector out to see him, as he wanted to have a talk with the latter anyway; that Yick did so the afternoon of the same day. The testimony further clearly tended to show an attempt by Sam Yick to bribe the inspector.

"The indictment," says the court, "alleges the conspiracy to have been entered into on the 24th day of August, 1911, being the day on which Inspector Morse took Inspector Bernard to Yick's store, and at which time Yick introduced to them the plaintiff in error, Jung Kim, as 'the man he was going to send down' to guide the Chinamen from Mexico into this country. If the testimony thus given on behalf of the government was true (a question, of course, for the determination of the jury), the officers of the law, instead of proceeding against the plaintiff in error, Sam Yick, for the attempted bribery of the inspector (with the best of motives, no doubt, but wrongly as we conceive), planned and induced him to enter into a scheme with them by which the Chinamen referred to in the indictment should be brought into the United States, and in the execution of which scheme so concocted they were, according to the evidence, so brought.

"We see nothing in the testimony of Inspector Morse, nor in any other evidence in the record, tending to show that the idea of a conspiracy originated with Sam Yick. Taking the testimony to be true, the crime he committed was the attempted bribery of the government inspector to prepare false papers for the admission of Chinese persons not entitled to enter the country; and the scheme which culminated in the conspiracy alleged in the indictment to have been

formed on the 24th day of August, 1911, by the plaintiffs in error and other persons to the grand jurors unknown was, according to the evidence, devised by the officers of the law, and had its origin in the letter of Inspector Morse, of date May 8, 1911, to his superior officer. And it was so contended in the court below on behalf of the plaintiffs in error, and, further, that the plaintiff in error Jung Kim was not a conspirator, but a mere employee of Sam Yick in the transactions in question.

"It is, of course, not a matter for this court to say what conclusion the jury would or should have drawn from the testimony tending to show that the alleged conspiracy was first suggested by the officers of the law, and that they lured the alleged conspirators on to commit the necessary overt act or acts and thus consummate the alleged crime; all of those matters being exclusively for the determination of the jury. And while it may be true that the mere aiding of one in the commission of a criminal act by a government officer or agent does not preclude the conviction of the party committing the crime, yet where the officers of the law have incited the party to commit the crime charged and lured him on to its consummation, the law will not authorize a verdict of guilty. * * *

"In the recent case of *Woo Wai v. United States*, 223 Fed. 412, 137 C. C. A. 604, we distinctly adjudged that it is against public to sustain a conviction for crime where the party or parties are induced to commit it by officers of the government who thereafter ensnare and apprehend them in such commission. In addition to the authorities there cited in support of that conclusion, see, also, *Taylor v. United States*, 193 Fed. 968, 113 C. C. A. 543, decided by this court prior to the decision in *Woo Wai v. United States*, supra; *United States v. Healy* (D. C.), 202 Fed. 349; *United States v. Jones* (C. C.), 80 Fed. 513; *United States v. Adams* (D. C.), 59 Fed. 674; *United States v. Whittier*, Fed. Cas. No. 16,688, 28 Fed. Cas. 594."

Limitation of Actions—Part Payment by One Joint Maker of Note.

—It was held in *McLaughlin v. Head* (Or.), 168 Pac. 614, that where one of two joint makers of a note had died, the act of his administrator in making a partial payment on the note did not operate as against the surviving maker to toll the Statute of Limitations. The following is from the opinion:

"The note was purely a joint one, and not joint and several, and the administrator of Lewis was not liable and could not have been sued thereon (8 Corpus Juris, 851; 9 Cyc. 653; 6 R. C. L. 880; *Portland Trust Co. v. Havelly*, 36 Or. 234, 59 Pac. 466, 61 Pac. 346). The administrator of Lewis took his estate absolutely unincumbered by this debt, and he could not revive it or in effect create a new obligation by making an unlawful payment upon an obligation from which